



## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

#### **[EPA-R01-OAR-2017-0117; FRL-9979-07-Region 1]**

#### **Air Plan Approval; Maine; Infrastructure State Implementation Plan Requirements**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving most elements of State Implementation Plan (SIP) submissions from Maine regarding the infrastructure requirements of the Clean Air Act (CAA or Act) for the 2008 lead (Pb), 2008 ozone, and 2010 nitrogen dioxide (NO<sub>2</sub>) National Ambient Air Quality Standards (NAAQS). In addition, EPA is approving two statutes submitted by Maine in support of its demonstration that the infrastructure requirements of the CAA have been met. Lastly, EPA is conditionally approving a sub-element of Maine's submittal relating to state boards and conflicts of interest. The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA.

**DATES:** This rule is effective on **[Insert date 30 days after date of publication in the Federal Register]**.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA-R01-OAR-2017-0117. All documents in the docket are listed on the <https://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available at

<https://www.regulations.gov> or at the U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square - Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** Anne K. McWilliams, Air Quality Planning Unit, Air Programs Branch (Mail Code OEP05-02), U.S. Environmental Protection Agency, Region 1, 5 Post Office Square, Suite 100, Boston, Massachusetts, 02109-3912; (617) 918-1697; [mcwilliams.anne@epa.gov](mailto:mcwilliams.anne@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

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## **I. Background and Purpose**

This rulemaking addresses infrastructure SIP submissions from the State of Maine for the 2008 Pb, 2008 ozone, and 2010 NO<sub>2</sub> NAAQS. The state submitted these infrastructure SIPs on the following dates: 2008 Pb – August 21, 2012; 2008 ozone – June 7, 2013; and 2010 NO<sub>2</sub> – June 7, 2013. On April 23, 2013, Maine Department of Environmental Protection (ME DEP) submitted a SIP revision to incorporate conflict of interest state law provisions into the SIP from

38 Maine Revised Statutes Annotated (MRSA) Section 341-C(7) and 5 MRSA Section 18. The April 23, 2013 SIP revision addresses element E(ii) requirements. Furthermore, on February 14, 2013, Maine submitted a SIP revision addressing amendments to certain provisions of 06-096 Code of Maine Regulations (CMR) Chapters 100 and 115. The February 14, 2013 SIP revision both defines  $PM_{2.5}$  and incorporates  $PM_{2.5}$  into the Prevention of Significant Deterioration (PSD) permitting program. This submission was supplemented on May 31, 2016. EPA approved these SIP revisions on August 1, 2016 (81 FR 50353) and June 24, 2014 (79 FR 35695). These revisions address element A, as well as elements C, D(i)(II), and (J) as they relate to PSD. Finally, on March 1, 2018, Maine submitted a letter providing information and clarification in support of its infrastructure SIP submittals. Details of Maine's submittals and EPA evaluation of those submittals can be found in our Notice of Proposed Rulemaking (NPRM) (83 FR 12905; March 26, 2018).

EPA is approving most of the elements of the above submittals (details can be found below). EPA is also approving into the Maine SIP several statutes submitted by Maine in support of their demonstration that the infrastructure requirements of the CAA have been met. Also, we are conditionally approving one sub-element of Maine's submittal relating to state boards and conflicts of interest.

## **II. Public Comments**

EPA received 12 sets of comments in response to the NPR. The comments discuss subjects outside the scope of an infrastructure SIP action, do not explain (or provide a legal basis for) how the proposed action should differ in any way, and, indeed, make no specific mention of the proposed action; they are not germane.

## **III. Final Action**

EPA is approving SIP submissions from Maine certifying that the state's current SIP is sufficient to meet the required infrastructure elements under sections 110(a)(1) and (2) of the Act for the 2008 Pb, 2008 ozone, and 2010 NO<sub>2</sub> NAAQS, except for certain aspects relating to State Boards (Element E) which we are conditionally approving. Specifically, EPA's actions for each infrastructure SIP requirement are shown in Table 1.

Table 1: EPA's Action on Maine's Infrastructure SIP submittals for listed NAAQS

Element	2008 Pb	2008 Ozone	2010 NO <sub>2</sub>
(A): Emission limits and other control measures	A	A	A
(B): Ambient air quality monitoring and data system	A	A	A
(C)1: Enforcement of SIP measures	A	A	A
(C)2: PSD program for major sources and major modifications	A	A	A
(C)3: PSD program for minor sources and minor modifications	A	A	A
(D)1: Contribute to nonattainment/interfere with maintenance of NAAQS	A	PA	NS
(D)2: PSD	A	A	A
(D)3: Visibility Protection	A	A	A
(D)4: Interstate Pollution Abatement	A	A	A
(D)5: International Pollution Abatement	A	A	A
(E): Adequate resources	A	A	A
(E): State boards	CA	CA	CA
(E): Necessary assurances with respect to local agencies	NA	NA	NA
(F): Stationary source monitoring system	A	A	A
(G): Emergency power	A	A	A
(H): Future SIP revisions	A	A	A
(I): Nonattainment area plan or plan revisions under part D	NG	NG	NG
(J)1: Consultation with government officials	A	A	A
(J)2: Public notification	A	A	A
(J)3: PSD	A	A	A
(J)4: Visibility protection	NG	NG	NG
(K): Air quality modeling and data	A	A	A
(L): Permitting fees	A	A	A
(M): Consultation and participation by affected local entities	A	A	A

In the above table, the key is as follows:

A	Approve
CA	Conditionally Approve
NA	Not applicable
NG	Not germane to infrastructure SIPs
NS	New Submittal (submitted on February 21, 2018). Will be acted on in a separate rulemaking.
PA	Previously approved (see 81 FR 70631, Oct. 13, 2016)

In addition, we are incorporating into the Maine SIP, the following Maine statutes which were included for approval in Maine's infrastructure SIP submittals: Maine's conflict of interest provisions found in 38 MRSA Section 341-C(7) and 5 MRSA Section 18, which DEP submitted as a SIP revision on April 23, 2013.

As noted in Table 1, EPA is conditionally approving aspects of Maine's SIP submittals pertaining to CAA section 110(a)(2)(E). The outstanding issues are with state provisions that govern membership of Maine's Board of Environmental Protection and conflict of interest requirements pertaining to the Commissioner of ME DEP, as described in detail in our NPR for this action. *See* 83 FR 12905 (Mar. 26, 2018). Maine must provide to EPA by **[Insert date 365 days after date of publication in the Federal Register]** a submittal(s) addressing these issues. If Maine fails to do so, this approval will become a disapproval on that date. EPA will notify ME DEP by letter that this action has occurred. At that time, this commitment will no longer be a part of the approved Maine SIP. EPA subsequently will publish a notice in the notice section of the **Federal Register** notifying the public that the conditional approval automatically converted to a disapproval. If the state meets its commitment within the applicable timeframe, the conditionally approved submission will remain a part of the SIP until EPA takes final action approving or disapproving the new submittal. If EPA disapproves the new submittal, the conditionally approved aspects will also be disapproved at that time. If EPA approves the submittal, then the portions of Maine's infrastructure SIP submittals that were conditionally

approved will be fully approved in their entirety and replace the conditional approval in the SIP. In addition, final disapproval of an infrastructure SIP submittal triggers the Federal Implementation Plan (FIP) requirement under section 110(c).

#### **IV. Incorporation by Reference**

In this rulemaking, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of: Maine's conflict of interest provisions found in 38 MRSA Section 341-C(7) and 5 MRSA Section 18, which DEP submitted as a SIP revision on April 23, 2013. These are described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these documents generally available through <https://www.regulations.gov>.

#### **V. Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- This action is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

#### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: June 12, 2018.

Alexandra Dunn,  
Regional Administrator,  
EPA Region 1.



Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 et seq.

**Subpart U – Maine**

2. Amend § 52.1019 by adding paragraphs (c), (d), and (e) to read as follows:

**§ 52.1019 Identification of plan—conditional approval.**

\* \* \* \* \*

(c) 2008 Ozone National Ambient Air Quality Standards (NAAQS): The 110(a)(2) infrastructure SIP submitted on June 7, 2013, is conditionally approved for Clean Air Act section 110(a)(2)(E) regarding State Boards and Conflicts of Interest. On March 1, 2018, the State of Maine committed to address these requirements.

(d) 2008 Lead NAAQS: The 110(a)(2) infrastructure SIP submitted on August 21, 2012, is conditionally approved for Clean Air Act section 110(a)(2)(E) regarding State Boards and Conflicts of Interest. On March 1, 2018, the State of Maine committed to address these requirements.

(e) 2010 Nitrogen Dioxide NAAQS: The 110(a)(2) infrastructure SIP submitted on June 7, 2013, is conditionally approved for Clean Air Act section 110(a)(2)(E) regarding State Boards and Conflicts of Interest. On March 1, 2018, the State of Maine committed to address these requirements.

3. In § 52.1020:

a. In paragraph (c), the table titled “EPA Approved Maine Regulations” is amended by adding entries “5 MRSA Section 18” and “38 MRSA Section 341-C(7)” at the end of the table.

b. In paragraph (e), the table titled “Maine Non Regulatory” is amended by adding three entries at the end of the table.

The additions read as follows:

**§ 52.1020 Identification of plan.**

\* \* \* \*

(c) \* \* \*

**EPA APPROVED MAINE REGULATIONS**

<b>State citation</b>	<b>Title/Subject</b>	<b>State effective date</b>	<b>EPA Approval Date EPA approval date and citation<sup>1</sup></b>	<b>Explanations</b>
**	*	*	*	**
5 MRSA Section 18	Disqualification of Executive Employees from Participation in Certain Matters	7/1/2003	[Insert date of publication in the Federal Register]  [Insert <u>Federal Register</u> citation]	Conflict of Interest Provisions
38 MRSA Section 341-C(7)	Board Membership Conflict of Interest	8/11/2000	[Insert date of publication in the Federal Register]  [Insert <u>Federal Register</u> citation]	Conflict of Interest Provisions

<sup>1</sup>In order to determine the EPA effective date for a specific provision listed in this table, consult the FEDERAL REGISTER notice cited in this column for the particular provision.

\* \* \* \*

(e) \* \* \*

**MAINE NON REGULATORY**

<b>Name of non regulatory SIP provision</b>	<b>Applicable geographic or nonattainment area</b>	<b>State submittal date/effective date</b>	<b>EPA approved date<sup>3</sup></b>	<b>Explanations</b>
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Submittal to meet Clean Air Act Section 110(a)(2) Infrastructure Requirements for the 2008 Lead (Pb) National Ambient Air Quality Standard	State of Maine	8/21/2012	<b>[Insert date of publication in the Federal Register]</b> <b>[Insert <u>Federal Register</u> citation]</b>	This action addresses the following Clean Air Act requirements: 110(a)(2)(A), (B), (C), (D), (E) except for State Boards, (F), (G), (H), (J), (K), (L), and (M).
Submittal to meet Clean Air Act Section 110(a)(2) Infrastructure Requirements for the 2008 8-Hour Ozone National Ambient Air Quality Standard	State of Maine	6/7/2013	<b>[Insert date of publication in the Federal Register]</b>  <b>[Insert <u>Federal Register</u> page number where the document begins]</b>	This action addresses the following Clean Air Act requirements: 110(a)(2)(A), (B), (C), (D) except for D(1), (E) except for State Boards, (F), (G), (H), (J), (K), (L), and (M).
Submittal to meet Clean Air Act Section 110(a)(2) Infrastructure Requirements for the 2010 Nitrogen Dioxide (NO <sub>2</sub> ) National Ambient Air Quality Standard	State of Maine	4/23/2013	<b>[Insert date of publication in the Federal Register]</b> <b>[Insert <u>Federal Register</u> citation]</b>	This action addresses the following Clean Air Act requirements: 110(a)(2)(A), (B), (C), (D) except for D(1), (E) except for State Boards, (F), (G), (H), (J), (K), (L), and (M).

<sup>3</sup>In order to determine the EPA effective date for a specific provision listed in this table, consult the FEDERAL REGISTER notice cited in this column for the particular provision.

[FR Doc. 2018-12895 Filed: 6/15/2018 8:45 am; Publication Date: 6/18/2018]